

Remarks/Arguments:

Claims 1 and 36 have been amended to correct minor typographical errors.

Claims 1, 25-30, 32-42 and 44-47 have been rejected under 35 U.S.C. 112, first paragraph, as lacking support in the specification. Specifically, the Examiner alleges that the specification does not recite a "computing device" or a "mobile handset," and that "it is unclear whether or not the computing device and the mobile handset are different devices, since from the claims it seems the subscriber is associated with both."

Applicants respectfully submit that the language of the claims is in fact fully supported by the specification. With respect to the feature of a "mobile handset," Applicants note that the specification refers to a "mobile unit," as well as "mobile station identifiers" and a "handset contract." Further, Figure 1 shows a block labelled, "WIRELESS SUBSCRIBER ACCESSING WLAN SERVICES." Still further, the specification makes reference to several specifications (for example, ANSI-41, GSM 09.02 and GSM 03.90) which are well known in the art to describe operating environments associated with terminal mobility. Applicants thus submit that the nature of a "mobile handset" – as, for example, a cellular telephone – would be clear to a person skilled in the art having regard to Applicants' specification. The steps performed by the mobile handset (for example, the sending and receiving of messages) also fall well within the purview of such a skilled person.

With respect to the feature of a "computing device," Applicants maintain that full support is provided in the specification. Given that the features of a

"mobile handset" and a "computing device" are explicitly introduced as separate features in the claims, one skilled in the art would clearly appreciate that they are in fact different devices. A subscriber being associated with both devices does not render unclear the separate nature of those devices, as there is no requirement, in the specification or elsewhere, that a given subscriber be associated with only one device. By way of further explanation, referring again to Figure 1, a block is provided with the label, "LAPTOP EQUIPPED WITH WLAN CARD." This block is also shown as being connected to a "WLAN ACCESS NETWORK." Applicants submit that a person skilled in the art would understand that the laptop block of Figure 1 represents an example of a "computing device" as recited in claim 1.

The Examiner further alleges that the specification contains no support for "rate of packets," "rate of charge" and "different classification." Applicants respectfully disagree. At paragraphs [0023], [0024] and [0026] of the description, Applicants discuss a "rate plan" in conjunction with WLAN access. Applicants submit that it would be clear to a person skilled in the art that the rating of WLAN traffic clearly requires the consideration of packets. Further, claim 11 as originally filed reads as follows:

"11. The method of claim 10, where the charging for such billing scenarios is accomplished by an improved and integrated series of rules which are invoked and designed to sort, classify and/or rate WLAN traffic."

In addition, the description makes reference to "packet/data rating and classification mechanisms inherent in the invention disclosed" at paragraph [0027] and refers to a U.S. Patent Application published as US 20040148384 and later issued as U.S. Patent No. 7,457,865, which also describes packet rating and classification. Applicants therefore submit that the features, "rate of packets," "rate of charge" and "different classification" as recited in the claims would be clearly understood by those skilled in the art.

Claims 1, 25-30, 32-42 and 44-47 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Kalavade (US 2003/0051041) in view of Takeuchi (US 2003/0134615) and Harnesk (US 2006/0008063), in various combinations with Schlieben (US 2003/0096605) and Brown (US 2003/0112936). Applicant respectfully traverses the above rejections, for at least the reasons set out in the pre-appeal brief request for review filed November 24, 2008. The Examiner has merely reproduced rejections from the previous office action, and has not yet addressed Applicants' arguments contained in the pre-appeal brief. Those arguments are therefore provided below.

Each of independent claims 1 and 36 recite, among others, the features of

"sending an instruction from said access gateway to said rating element to determine a rate for packets carried between said computing device and said WLAN access network to establish a rate of charge for each of said packets according to a different classification assigned to each of said packets," and,

"sending an instruction from said access gateway to said charging element representing charging details associated with the access of said server by said

computing device; said charging details based on said rate."

With respect to the above-reproduced features, the Examiner concedes that Kalavade does not satisfy "...*said charging details based on said rate.*" The Examiner relies on Harnesk for that feature, as well as for the feature of "*sending an instruction from said access gateway to said rating element to determine a rate for packets...*"

Kalavade describes a Converged Billing/authorization Gateway (CBG) which collects usage information from a router, formats the usage information and sends the information to an operator's existing system. The operator's system then rates the usage information and bills the user. Of note is that no rate is provided to the CBG from the router, and no data of any sort is received at the CBG from the operator's system.

Harnesk describes a control system with a credit account and a rating engine. Harnesk also describes a packet forwarding system (integrated with a router, for example) with a charging policy enforcement point and a token bucket. Harnesk's packet forwarding system manages multiple services for a user by using rating information obtained from the control system.

The Examiner, in relying on Harnesk to provide the above-identified features lacking from Kalavade, asserts that it would be obvious to combine the teachings of Kalavade and Harnesk and that the motivation for doing so "would have been to allow for providing a flexible real-time charging

system, whereby signaling between systems is reduced (Harnesk par. 14).” Specifically, the Examiner argues that the reduction in signaling would be between the CBG and operator system of Kalavade. However, as will be argued below, Kalavade teaches away from such a combination, and such a combination would in fact increase signaling.

In response to Applicants’ previous arguments that Kalavade, at paragraph [0232], teaches expressly against the incorporation of a rating element with the CBG, the Examiner earlier asserted that merely because Kalavade teaches “a way” of rating does not mean that he teaches “away.” This assertion ignores the actual teaching of Kalavade – Kalavade does not merely teach “a way” of carrying out rating. Rather, Kalavade expressly teaches against one particular way. In other words, Kalavade is not simply teaching that rating may be carried out by the operator system, but rather is teaching that it may be carried out by the operator system and should not be carried out by the CBG. Therefore, Kalavade does in fact teach “away” from the very combination proposed by the Examiner, and the Examiner has yet to effectively address this argument.

With respect to motivation, the Examiner contends that it would be obvious to provide Kalavade’s CBG with rating capabilities, as this would result in reduced signaling between the CBG and the operator system. This contention is flawed, as it ignores an important function of Kalavade’s operator system. As also set out at paragraph [0232] of Kalavade, the operator system generates a final bill for the user. Therefore, the CBG must send information to the operator system, whether or not it has been rated.

Whether the CBG sends unrated usage information (as encouraged by Kalavade) or rated usage information (as proposed, contrary to Kalavade's teaching, by the Examiner) to the operator system matters little, because the operator system must still receive sufficient information to generate a bill.

In addition, Applicant notes that claims 1 and 36 include the feature that an instruction to be sent "from said access gateway to said charging element ... said charging details based on said rate." Kalavade's router in Fig. 9 has been identified by the Examiner as being equivalent to the access gateway. In order to provide the above claim feature, Kalavade's router must obtain a rate from the modified CBG proposed by the Examiner, and then send the instruction. Clearly, this actually increases traffic between Kalavade's unmodified router and CBG. Thus, the combination of Kalavade and Harnesk is not only unsupported by the Examiner's motivation of reducing signaling between the CBG and the operator system, but also actually causes increased signaling elsewhere, namely between the CBG and the router. Applicant notes that increased signaling between the packet forwarding system and the control system is precisely what Harnesk was attempting to reduce. In fact, that is the source of the Examiner's motivation to combine the references.

In summary, Applicant submits that the Examiner has not demonstrated that there was motivation to combine the cited references. E.g., *In re Lee*, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002). Nor has the Examiner shown that the references suggest the desirability of the combination. *In re Fulton*, 73 USPQ2d 1141, 1145 (Fed. Cir. 2004) Instead, Kalavade teaches against the

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very combination suggested by the Examiner, and the claimed motivation for combining the references is unsuitable because the results of the combination directly contradict that motivation.

Claims 1 and 36 are believed to be patentable for at least the above reasons. All remaining claims currently pending are dependant on one of claims 1 and 36, and are therefore also believed to be patentable for at least the above reasons.

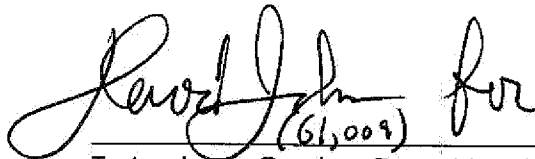
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Conclusion

Applicant believes that this application is now in condition for allowance. To the extent that any issues remain to be resolved, however, Applicant requests that the Examiner contact the undersigned to resolve these issues.

The Commissioner is also authorized to charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-3750.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "T. Andrew Currier", followed by the word "for" and a horizontal line. Below the signature, the number "(61,009)" is handwritten.

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